

JUDGE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,)	No. CR17-5116 BHS
)	
Plaintiff,)	MOTION FOR RETURN OF
)	PROPERTY
v.)	
)	
CHARLES ANDREW STOCKER,)	Noted: April 27, 2018
)	
Defendant.)	

I. INTRODUCTION

Charles Stocker, by and through his attorney Colin Fieman, hereby moves the Court pursuant to Fed. R. Crim. Pro. 41(g) for the immediate return of property seized by the Government from Mr. Stocker on July 20, 2016. The property includes \$840 seized from Mr. Stocker's truck; \$5,835 seized from a safe in his store; \$1,230 seized from Mr. Stocker's home; and other personal property. *See* Exh. A, attached hereto (property inventory and search report). Mr. Stocker has been aggrieved by the deprivation of this property and he respectfully requests that the Court order the Government to return it without further delay.

II. FACTUAL BACKGROUND AND ARGUMENT

Mr. Stocker was charged in a superseding indictment with aiding and abetting a conspiracy to distribute controlled substances. He made his initial appearance on February 22, 2017. Mr. Stocker was found not guilty by a jury on March 14, 2018.

Council immediately contacted the Government to arrange for the return of Mr. Stocker's property on March 14:

Stocker Evidence

Amy Strickling to: Arnold, Justin (USAWAW) 3, Lombardi, Vince (USAWAW) 03/14/2018 12:58 PM
Cc: Colin Fieman, John Carpenter

Justin/Vince,

Are you able to release evidence so Mr. Stocker can obtain it before he leaves town tomorrow?

Since then, the defense has made three additional requests for the return of Mr. Stocker's property. The Government responded as follows on April 4:

Sent: Friday, March 30, 2018 1:59 PM
To: Arnold, Justin (USAWAW) 3 <JArnold3@usa.doj.gov>; Lombardi, Vince (USAWAW) <VLombardi@usa.doj.gov>
Cc: Amy Strickling <Amy_Strickling@fd.org>; John Carpenter <John_Carpenter@fd.org>
Subject: Mr. Stocker's Property

Justin and Vince,

Still need to get Mr. Stocker's money and other property returned. Any updates?

Thanks, Colin

From: "Arnold, Justin (USAWAW) 3" <Justin.Arnold@usdoj.gov>
To: Colin Fieman <Colin_Fieman@fd.org>, "Lombardi, Vince (USAWAW)" <Vince.Lombardi@usdoj.gov>
Cc: Amy Strickling <Amy_Strickling@fd.org>, John Carpenter <John_Carpenter@fd.org>
Date: 04/04/2018 09:39 AM
Subject: RE: Mr. Stocker's Property

Colin,

I was out of the office for a few days, but I finally talked to Cliff. We are ready to return Mr. Stocker's cash and his phone. How would you like to handle it? Cliff said he could ship it to Nevada and have Mr. Stocker pick it up personally at the FBI or he can give it to you.

Justin

Counsel responded to that offer on April 9th by suggesting that the property be sent to Nevada but received no immediate reply from the Government. Counsel again

1 requested return of Mr. Stocker's property on April 17th, and was informed at that time
2 that the FBI might release the property "next week."

3 While it appears that AUSA Justin Arnold has been following up on the property
4 return requests to the best of his ability, the FBI (which has possession of Mr. Stocker's
5 property) is not responding in a timely manner. Rather than invite further delay, Mr.
6 Stocker is now asking the Court to order the immediate return of his property.

7 Pursuant to Rule 41(g), any person "aggrieved . . . by the deprivation of
8 property" seized by the Government is entitled to prompt return of the property unless
9 the movant has no claim to possession of it, the property is contraband or subject to
10 forfeiture, or the Government has a continuing need for the property as evidence.
11 *United States v. Van Cauwenberghe*, 934 F.2d 1048, 1061 (9th Cir. 1991); *see also*,
12 *e.g.*, *United States v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 497-98 (6th Cir.
13 1998) (once a movant for return of property has established his or her right to seized
14 property, that person "necessarily suffers an injury" by its continued retention by the
15 Government).

16 In this case, the Government has no legitimate basis for keeping Mr. Stocker's
17 property and it has had ample time to return it (35 days). Further delay in returning the
18 property will further infringe on Mr. Stocker's property and privacy rights.

19 IV. CONCLUSION

20 For the reasons stated above, Mr. Stocker respectfully requests that the Court
21 order the Government to immediately return all property that it seized from him.

22 DATED this 18th day of April, 2018.

23 Respectfully submitted,

24 s/ Colin Fieman

25 Attorney for Charles Andrew Stocker

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of filing to all registered parties.

s/Carolynn Cohn
Paralegal